

Holland+Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
www.hklaw.com

June 17, 2005

DOCKET FILE COPY ORIGINAL
DAVID A. O'CONNOR
202-926-1889

Internet address:
doconnor@hklaw.com

VIA HAND DELIVERY

RECEIVED

JUN 17 2005

Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Attention: Video Division, Media Bureau

Re: Amendment of Section 73.606(b), Table of Allotments, Television
Broadcast Stations; and Section 73.622(b) Table of Allotments,
Digital Broadcast Television Stations (Mobile, Alabama)
FCC File Nos. BPCT-960722KQ, BPCT-960725LB, BPCT-960920WX
MB Docket No. 04-281, RM-11041
Petition to Rescind Construction Permit or to Clarify

Dear Ms. Dortch:

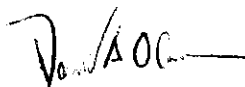
Transmitted herewith, on behalf of Paxson Communications Corporation, are an original and four (4) copies of a Petition to Rescind Construction Permit or to Clarify.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier.

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for Paxson Communications Corporation

Enclosure

FILED
JUN 17 2005
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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JUN 17 2005

Federal Communications Commission
Office of Secretary

In the Matter of)	
Amendment of Section 73.606(b),)	
Table of Allotments, Television)	MB Docket No. 04-281
Broadcast Stations; and Section)	RM-11041
73.622(b), Table of Allotments, Digital)	
Broadcast Television Stations.)	
(Mobile, Alabama))	
FCC File No. BPCT-960722KQ)	
FCC File No. BPCT-960725LB)	
FCC File No. BPCT-960920WX)	

To: Secretary, FCC
For: Media Bureau, Video Division

**PETITION TO RESCIND
CONSTRUCTION PERMIT OR TO CLARIFY**

Paxson Communications Corporation ("Paxson"), by its counsel and pursuant to Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, hereby requests that the Commission rescind the Construction Permit that was erroneously issued in this proceeding in favor of Paxson on May 18, 2005.¹ In the alternative, Paxson requests that the Commission clarify that the Construction Permit, which apparently was available for only a brief period in CDBS and has since been removed, was unsigned and never officially issued.

¹ A copy of the Construction Permit, which was printed from the Commission's Consolidate Data Base System ("CDBS") on May 19, 2005, is attached hereto as Exhibit 1.

Background

In 1996, Television Capital Corp. of Mobile ("TCCM"), Fant Broadcast Development, L.L.C. ("Fant") and Marri Broadcasting, L.P. ("Marri") filed mutually exclusive applications for a construction permit to operate on NTSC Channel 61 at Mobile, Alabama. In 1998, the three applicants resolved their mutual exclusivities and filed, on the statutory deadline of January 30, 1998,² a "Joint Approval of Universal Settlement Agreement" ("Settlement Agreement") seeking grant of the TCCM application and the dismissal of the applications submitted by Fant and Marri. Concurrently, TCCM and Paxson submitted an amendment to the surviving TCCM application seeking the substitution of Paxson as the surviving applicant.³

Because of changes in the Commission's rules that occurred after the Settlement Agreement was filed, the original channel applied for by the mutually exclusive applicants in this proceeding (Channel 61) became unavailable as a suitable analog broadcast channel. In response to those rule changes, the parties to the Settlement Agreement filed various joint amendments proposing to substitute Channel 50 in lieu of Channel 61. However, the Commission subsequently informed the parties that Channel 50 would not be available to them because the proposal conflicted with a subsequently implemented digital allotment on that

² 47 U.S.C. § 309(1)(3).

³ On June 6, 2005, at the request of the Commission's staff, Paxson filed copies of the Letter Agreement between Paxson and TCCM, along with an associated Promissory Note.

frequency for a television station serving Fort Walton Beach, Florida.⁴ In response, the mutually exclusive applicants in this proceeding sought the issuance of a Construction Permit for digital Channel 18 in lieu of analog Channel 61.

On November 5, 2004, the Chief of the Video Division of the Media Bureau issued a *Report and Order* adopting the parties' proposal to allot digital Channel 18 at Mobile.⁵ The *Report and Order* required Paxson, "within 45 days of the effective date of this [Report and Order, to] submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 18 in lieu of TV Channel 61 at Mobile."⁶ Paxson timely filed that application.⁷

On April 27, 2005, the Commission issued a *Public Notice* erroneously identifying TCCM (not Paxson) as the party which filed the minor change

⁴ See Letter from Clay Pendarvis to TCCM et al., Ref. No. 1800E3-JLB (Jan. 9, 2004).

⁵ *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations; and Section 73.622(b), Table of Allotments, Digital Broadcast Television Stations. (Mobile, Alabama)*, Report and Order, MB Docket No. 04-281, DA 04-3473 (Chief, Video Div., MB rel. Nov. 5, 2004) ("*Report and Order*").

⁶ *Id.* ¶ 6.

⁷ The *Report and Order* was published in the *Federal Register* on November 12, 2004. See 69 Fed. Reg. 65381. The effective date of the *Report and Order* was December 20, 2004. *Id.* Paxson timely filed the required application on February 3, 2005. Paxson originally made the filing in paper form because CDBS did not permit the above-referenced FCC file numbers to be amended to request a construction permit for a digital television station in lieu of an analog television station, and because Paxson did not have an application number on file. See Paxson's pleading entitled "Submission of Minor Change Application for a Construction Permit," at 3 (filed Feb. 3, 2005). Moreover, the *Report and Order* did not indicate which of the above-referenced FCC file numbers was to be amended. Upon further instruction from the Commission's staff, Paxson submitted the application via CDBS on April 22, 2005.

application.⁸ Paxson filed a Request for Reconsideration and/or Clarification (“Request”) of the *Public Notice* on May 27, 2005, requesting that the Commission reconsider its decision to designate TCCM as the applicant, and otherwise clarify its processing of the DTV Channel 18 application. That Request is pending.

On May 19, 2005, less than thirty days after the erroneous *Public Notice* was issued, Paxson’s counsel conducted a routine review of the Commission’s online CDBS records related to this proceeding and obtained a copy of the attached Construction Permit issued in favor of Paxson for DTV Channel 18, Mobile, Alabama. Apparently the Construction Permit since has been removed from CDBS.

As discussed below, in order to ensure that any Construction Permit issued to Paxson in this proceeding is issued in accordance with the Commission’s rules and consistent with the requirements of the Communications Act of 1934, as amended (“Communications Act”), Paxson requests that the Commission rescind the Construction Permit as improperly issued or clarify that the Construction Permit was unsigned and thus never officially issued.⁹

Discussion

Paxson submits that the Construction Permit must be rescinded for several reasons. First, the Commission never has formally approved the Settlement Agreement in compliance with Section 311(c)(3) of the Communications Act. That

⁸ *Broadcast Applications*, Public Notice, Report No. 25972, at 6 (rel. Apr. 27, 2005) (“*Public Notice*”).

⁹ An informal request to the Commission’s staff seeking this action has not been acted upon.

section provides that “[t]he Commission shall approve [a settlement agreement] only if it determines that (A) the agreement is consistent with the public interest, convenience, or necessity; and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.”¹⁰ To date, the Commission has not approved the Settlement Agreement or made positive determinations with respect to subsections (A) and (B) of the statute. Consequently, the Construction Permit was issued prematurely and improperly.

Second, the Commission has not afforded the public an opportunity to comment on the Settlement Agreement or on the proposal to substitute Paxson as the ultimate surviving applicant. Indeed, the Commission’s error in noting TCCM as the applicant actually misled the public. Section 309(b) of the Communications Act provides that no application for a broadcasting station “shall be granted by the Commission earlier than 30 days following issuance of public notice by the Commission of the acceptance for filing of such application or any substantial amendment thereof.”¹¹ In this case, the Commission has not issued any notice with respect to the Settlement Agreement. Absent such notice, any Construction Permit deriving from the Settlement Agreement is inconsistent with the requirements of Section 309(b). Furthermore, the Commission has not issued a Public Notice regarding the proposal to substitute Paxson as the ultimate surviving applicant. Even if the *Public Notice* had properly listed Paxson as the applicant, which it did

¹⁰ 47 U.S.C. § 311(c)(3).

¹¹ *Id.* § 309(b).

not, the Construction Permit would be invalid for failure to comply with Section 309(b) of the Communications Act, because the Construction Permit was issued on May 18, 2005, less than 30 days after the April 27, 2005 *Public Notice* announcing TCCM as the applicant.

Third, the Commission never granted the request to authorize Paxson as a substitute applicant for TCCM and Paxson is not a party to the Settlement Agreement. Unless and until the steps described above are taken, Paxson believes that any Construction Permit issued to it for Channel 18 DTV facilities at Mobile fails to comply with the requirements of the Communications Act and the Commission's rules.

Finally, as a result of the procedural deficiencies noted above, Paxson is not a cut-off pending applicant as required by Section 309(l) of the Communications Act.¹² Consequently, any Construction Permit issued to Paxson at this point is invalid. The Commission's decision to issue a *Public Notice* listing TCCM as the applicant for DTV channel 18 at Mobile has created even more concern that Paxson is not an appropriate cut-off pending applicant and that the Construction Permit is invalid. As should be the case for any applicant, Paxson requires a legally valid permit as a predicate to construction of a new television station.

Conclusion

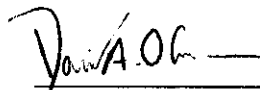
For the reasons set forth above, Paxson requests that the Commission rescind the Construction Permit as erroneously issued. In the alternative, Paxson requests

¹² *Id.* § 309(l).

that the Commission clarify that the Construction Permit never was officially issued because apparently it appeared in CDBS for only a brief period and never was signed by an FCC official. To rectify the procedural deficiencies described in this pleading, Paxson requests that the Commission: 1) reconsider its decision to designate TCCM as the applicant; 2) place the Settlement Agreement and the proposal to substitute Paxson on Public Notice for the statutory period of 30 days; and 3) following such Public Notice, a) grant the Settlement Agreement and the substitution of Paxson as the surviving applicant, and b) issue a construction permit to Paxson authorizing DTV Channel 18 facilities at Mobile, Alabama. Paxson also renews its several earlier requests in, or related to, this proceeding.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION



Charles R. Naftalin
David A. O'Connor
Holland & Knight LLP
2099 Pennsylvania Ave., NW
Suite 100
Washington, DC 20006
Tel: 202-955-3000
Fax: 202-955-5564
Its Attorneys

June 17, 2005

CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, certify that on June 17, 2005, I caused a copy of the foregoing "Petition for Rescission of Construction Permit or to Clarify" to be delivered, via postage paid, first class mail unless otherwise indicated, to the following:


Mary Fitzgerald*
Media Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Thomas J. Dougherty, Esq.
Kilpatrick Stockton LLP
607 14th Street, NW
Suite 900
Washington, DC 20005

Howard M. Miles, Esq.
2301 1st Avenue North
Suite 104
Birmingham, AL 35203

Vincent A. Pepper, Esq.
Womble Carlyle Sandridge & Rice
1401 Eye Street, 7th Floor
Washington, DC 20005

* Via Hand Delivery



Laura Ledet

EXHIBIT 1

United States of America
FEDERAL COMMUNICATIONS COMMISSION
DIGITAL TELEVISION BROADCAST STATION
CONSTRUCTION PERMIT

Authorizing Official:

Official Mailing Address:

PAXSON COMMUNICATIONS CORPORATION
601 CLEARWATER PARK ROAD
WEST PALM BEACH FL 33401

Clay C. Pendarvis
Associate Chief
Video Division
Media Bureau

Facility Id: 83740

Grant Date: May 18, 2005

Call Sign: NEW-DT

This permit expires 3:00 a.m.
local time, 36 months after the
grant date specified above.

Permit File Number: BPCT-19960920WX

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of Permittee: PAXSON COMMUNICATIONS CORPORATION

Station Location: AL-MOBILE

Frequency (MHz): 494 - 500

Channel: 18

Hours of Operation: Unlimited

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Antenna type: (directional or non-directional): Directional

Description: DIE, TFU-28GTH 6T120

Beam Tilt: 1 Degrees Electrical

Major lobe directions 110 350
(degrees true):

Antenna Coordinates: North Latitude: 30 deg 36 min 45 sec

West Longitude: 87 deg 38 min 43 sec

Transmitter output power: As required to achieve authorized ERP.

Maximum effective radiated power (Average): 300 kW
24.8 DBK

Height of radiation center above ground: 571 Meters

Height of radiation center above mean sea level: 616 Meters

Height of radiation center above average terrain: 574 Meters

Antenna structure registration number: 1212516

Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.

Special operating conditions or restrictions:

- 1 The grant of this construction permit is subject to the condition that, with ample time before commencing operation, you make a good faith effort to identify and notify health care facilities (e.g., hospitals, nursing homes, see 47 CFR 15.242(a)(1)) within your service area potentially affected by your DTV operations. Contact with state and/or local hospital associations and local governmental health care licensing authorities may prove helpful in this process. During this pre-broadcast period, you must provide all notified entities with relevant technical details of your operation, such as DTV channel, targeted on-air date, effective radiated power, antenna location, and antenna height. You are required to place in the station's public inspection file documentation of the notifications and contacts made and you may not commence operations until good faith efforts have been made to notify affected health care facilities. During this pre-broadcast period and for up to twenty (20) days after commencing operations, should you become aware of any instances of medical devices malfunctioning or that such devices are likely to malfunction due to your DTV operations, you must cooperate with the health care facility so that it is afforded a reasonable opportunity to resolve the interference problem. At such time as all provisions of this condition have been fulfilled, and either upon the expiration of twenty (20) days following commencement of operations or when all known interference problems have been resolved, whichever is later, this condition lapses.

*** END OF AUTHORIZATION ***